

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

AMERICAN COUNCIL OF THE BLIND
OF INDIANA, INDIANA PROTECTION
AND ADVOCACY SERVICES
COMMISSION, KRISTIN FLESCHER,
RITA KERSH, and WANDA TACKETT,

Plaintiffs,

v.

INDIANA ELECTION COMMISSION;
THE INDIVIDUAL MEMBERS of the
INDIANA ELECTION COMMISSION,
in their official capacities; INDIANA
SECRETARY OF STATE, in her official
capacity, THE INDIANA ELECTION
DIVISION; and THE CO-DIRECTORS
OF THE INDIANA ELECTION
DIVISION, in their official capacities,

Defendants.

Case No. 1:20-cv-3118-JMS-MJD

**PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND
PERMANENT INJUNCTION, OR IN
THE ALTERNATIVE A
PRELIMINARY INJUNCTION**

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INJUNCTION, OR IN THE ALTERNATIVE A PRELIMINARY INJUNCTION**

Plaintiffs, by and through their attorneys, request that this Court grant their motion for summary judgment and permanent injunction, or in the alternative a preliminary injunction. In support of this motion, Plaintiffs state as follows:

1. The undisputed facts show that Indiana's Absentee Vote By Mail program violates the Americans with Disabilities Act and Rehabilitation Act as applied to voters with print disabilities, including Plaintiffs.
2. Indiana's Absentee Vote By Mail program does not permit voters with print disabilities to cast a private and independent absentee ballot.

3. In particular, the traveling board required to mark the absentee ballots of voters with disabilities violates those voters' right to a private and independent ballot, and presents a voting experience on a very limited timeline. *See* Ind. Code § 3-11-10-25.
4. Defendants' efforts to implement Senate Enrolled Act 398 have not resulted in a method enabling voters with print disabilities to cast a private and independent absentee ballot.
5. Defendants' SEA 398 program provided voters with print disabilities with inaccessible registration forms, .pdf ballots, ABS-25 secrecy waiver forms, and Absentee Voter Bill of Rights documents in the May 2022 election.
6. Inaccessible .pdf documents, like paper documents, cannot be completed privately and independently by voters with print disabilities. Filing No. 80-6 at 7-8 (Youngblood Savage Dec. ¶ 23).
7. The ADA and Rehabilitation Act require Defendants to offer voters with print disabilities the ability to vote absentee privately and independently. *See Nat'l Fed'n of the Blind, Inc. v. Lamone*, 813 F.3d 494, 506-07 (4th Cir. 2016); *see also Hindel v. Husted*, 875 F.3d 344, 345-46 (6th Cir. 2017); *Taliaferro v. N.C. State Bd. of Elections*, 489 F. Supp. 3d 433, 437-38 (E.D.N.C. 2020); *Drenth v. Boockvar*, No. 1:20-CV-00829, 2020 WL 2745729, at *5 (M.D. Pa. May 27, 2020).
8. Because there is no genuine dispute of material fact, Plaintiffs are entitled to judgment as a matter of law on their claims under the ADA and Rehabilitation Act. *See, e.g., Meyer v. Walthall*, 528 F. Supp. 3d 928, 935 (S.D. Ind. 2021); *Culvahouse v. City of LaPorte*, 679 F.Supp.2d 931, 946 (N.D. Ind. 2009).
9. Defendants will not implement a private and independent program for voters with print disabilities to vote absentee absent an injunction from the Court.

10. A remote accessible vote by mail (RAVBM) tool would allow voters with print disabilities to cast an absentee ballot privately and independently using the assistive technology they use at home. Filing No. 80-5 at 3 (Blake Dec. ¶ 16).
11. Multiple RAVBM tools exist that Defendants can implement for Indiana voters with print disabilities. Filing No. 80-5 at 4 (Blake Dec. ¶ 18).
12. Defendants' discriminatory absentee voting program has caused and will continue to cause Plaintiffs to suffer irreparable harm. *See, e.g., Taliaferro*, 489 F. Supp. 3d at 437-38; *Drenth*, 2020 WL 2745729, at *5; *Nat'l Fed'n of the Blind, Inc. v. Lamone*, No. RDB-14-1631, 2014 WL 4388342, at *15 (D. Md. Sept. 4, 2014), *aff'd*, 813 F.3d 494, 506-07 (4th Cir. 2016).
13. Plaintiffs lack an adequate remedy at law. *See League of Women Voters of N.C.*, 769 F.3d at 247; *Obama for Am.*, 697 F.3d at 436; *Dillard v. Crenshaw Cnty.*, 640 F. Supp. 1347, 1363 (M.D. Ala. 1986)
14. The balance of harms favors granting Plaintiffs' requested injunction. *See Drenth*, 2020 WL 2745729, at *5-6; *Lamone*, 2014 WL 4388342 at *15.
15. Plaintiffs request that this Court issue a permanent injunction making the traveling absentee voter board permissive rather than mandatory, and requiring Defendants to implement an RAVBM system to make its absentee voting program accessible to voters with print disabilities.
16. In the alternative, Plaintiffs request that this Court issue a preliminary injunction directing the same for the November 2022 General Elections and any elections thereafter until trial and decision are complete.
17. A memorandum of law and appendix of exhibits supporting this motion is being filed

contemporaneously.

WHEREFORE, Plaintiffs respectfully request that this Court issue a permanent injunction making the traveling absentee voter board (“traveling board”) permissive rather than mandatory, and requiring Defendants to implement an RAVBM system to make its absentee voting program accessible to voters with print disabilities, or in the alternative, issue a preliminary injunction directing the same for the November 2022 General Elections and any elections thereafter until trial and decision are complete.

This 18th day of May, 2022.

Respectfully submitted,

s/ Christina Brandt-Young
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